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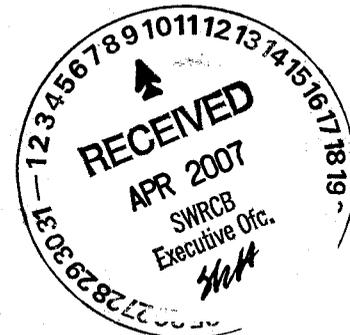


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April 9, 2007

Wetland/Riparian Policy
Deadline: 4/19/07, 12 noon

Ms. Song Her
Clerk to the Board
Executive Office
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 94812-0100



Dear Ms. Her:

We appreciate the opportunity to comment on the scope and content of the environmental information to be included in the environmental analysis for the proposed Wetland and Riparian Area Protection Policy.

We strongly encourage that the staff report for this proposal, the equivalent of a CEQA document, fully addresses the impact on the regulatory process for obtaining permits for dredging, filling, and other actions that may affect newly defined wetlands and/or riparian areas. The Department, with our extensive roadway maintenance responsibilities, would likely need to work with the State Water Resources Control Board to develop programmatic agreements for drainage and culvert work.

The U.S. Army Corps of Engineers' (Corps) wetlands definition has undergone years of scientific and regulatory scrutiny, recently resulting in a delineation manual specifically directed to the arid west. Layering a new definition over this parameter could possibly increase the levels of approval, and time, needed for delivery of transportation projects. The staff report should address partnering with other state agencies to assure that wetland definitions are consistent with each other.

Compensatory mitigation for wetlands, under the Corps' definition, is a well-known challenge. The staff report should clearly show how the addition of a definition for riparian areas, and added mitigation and monitoring requirements will provide greater protection for the environment, and at what cost to permit applicants.

If Alternative 3 or 4 is chosen, which would provide more protection to wetlands than the federal CWA 404(b)(1) Guidelines, Caltrans projects that are funded by the Federal Highway Administration could be at risk for losing funding to mitigate unavoidable wetland impacts that exceed the current federal wetland definition.

If there is a new regulation for discharges and activities that impact wetlands including invasive species (page 15, paragraph 8), the staff report should specify which species list would be used to define an invasive species.

The scoping document indicates that Alternative 3 (page 13) and 4 (page 16) would address cumulative impacts. However, CEQA already requires that cumulative impacts be addressed.

As noted in the Scoping Document, some Regional Boards have used the 401 program to regulate discharges to waters of the state, including isolated wetlands. In some cases, Boards used the 401 certifications to regulate discharges that are concurrently regulated by other permits such as storm water discharges covered by NPDES permits issued under section 402 of the Clean Water Act. We request that as this program is developed, the implementation documents clarify the regulatory scope of the requirements being developed. In particular, we urge the Board to ensure that the process does not result in overlapping regulatory structures.

On page 6, the scoping document includes the following statement:

The North Coast and San Francisco Bay Regional Water Boards currently are developing a "Stream and Wetlands System Protection Policy," which will be proposed as Basin Plan amendments in those regions. The Regional Water Boards' amendments are intended to establish regional wetland and riparian area protections.¹ The development of a State Water Board Wetland and Riparian Area Protection Policy would give a statewide regulatory context to the efforts of these and other Regional Water Boards to protect wetland and riparian areas.

It is not clear how the State Water Board effort provides a "statewide regulatory context." We are very concerned that we may end up with Regional Board requirements and State Board requirements that may be different. Particularly for an agency like Caltrans, it is important to have statewide consistency. It is difficult to develop policies and train staff to implement programs with implementation procedures that vary from county to county.

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If you have questions regarding these comments, please contact Gregg Erickson, of my staff, at (916) 652-6296, or Veda Lewis at (916) 653-7946.

Sincerely,



JAY NORVELL
Chief
Division of Environmental Analysis